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HAROLD B. WILLEY, C

No. 823

In the

Supreme Court of the United States

..... TERM, 1956

MARGARET PRIEST,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

ON A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

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INDEX

	Page
Opinion Citation	1
Jurisdiction	1-2
Question Presented	2
Statutes Involved	2
Statement	2-3
Reasons for Granting Writ	4-9
Importance	9-10
Conclusion	10
Appendix	11-39

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Cases

	Page
Bowser v. Williams, 25 S. W. 453, 6 Tex. Civ. App. 197	5
Commander v. Bryan (Civil Appeals), 123 S. W. 2d 1008	7, 9
Emery v. State, 123 S. W. 133	5
Grimes, Ex Parte, 81 Tex. Cr. R. 405; 195 S. W. 858	7
Marin v. Augadahl, 247 U. S. 142; 38 S. Ct. 452; 62 L. Ed. 1038-1043	7
McDonald v. Mabee, 243 U. S. 90; 37 S. Ct. 343; 61 L. Ed. 608	7
National Exchange Bank of Tiffon v. Wiley, 195 U. S. 257, 25 S. Ct. 70; 49 L. Ed. 184	7, 8
Texas Farm Bureau Association v. Lennox, 296 S. W. 325	5
Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897	7, 8
Quintanilla, Ex Parte, 207 S. W. 2d 377	7
Walker v. State, 214 S. W. 331; 85 T. C. R. 482	6
Wall v. State, 18 Tex. 682, 70 Am. Dec. 302	6
Wyatt v. State, 238 S. W. 917; 91 T. C. R. 348, 50 Am. Jur., Sec. 570-573, Sec. 569-576	6

Statutes

Articles 52-24b and 52-24c Vernon's Annotated Code Criminal Procedure, State of Texas	2
The Fourteenth Amendment United States Constitution	7
Sec. 172, 14th American Jurisprudence	4

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The Opinion of the Court of Criminal Appeals of the State of Texas (R. 16-18) is reported ..... Texas Criminal Reports, ...; ..... S. W. 2d ..... (Opinion fully printed appendix, pages 11-12-13-14 (OPINION NOT YET REPORTED).

JURISDICTION

The judgment of the Court of Criminal Appeals was entered on the 2d day of February, 1956, denying Petitioner's Original Application for a Writ of Habeas Corpus filed in the State's highest court.

The jurisdiction of this Court is invoked under Title 28 United States Code Annotated, Section 1257(3) since the Petitioner asserted a valid right, claim, title and privilege under the Fourteenth Amendment of the United States Constitution to not be illegally confined by virtue of a void and unenforceable judgment.

QUESTION PRESENTED

Does the conviction and imprisonment of Petitioner by virtue of a State Court void or unenforceable judgment, violate the Fourteenth Amendment of the Federal Constitution when the State Trial Court, wherein the conviction occurred, was abolished by Statute before final judgment was rendered against Petitioner, there being no provision or savings clause to save the pending judgments of the Trial Court?

STATUTES INVOLVED

Articles 52-24b (Appendix, pages 17-28) and 52-24c (Appendix, pages 28 to 39) Vernon's Annotated Code Criminal Procedure, State of Texas;

The Fourteenth Amendment of the United States Constitution (Appendix, page 39).

STATEMENT

Petitioner was convicted in the Special Criminal District Court of Dallas County, Texas, of the offense of Theft From The Person, a felony, on the 7th day of February, A. D. 1955, in case No. 7255J, styled the State of

Texas v. Margaret Priest. Thereafter the case was appealed to the Court of Criminal Appeals of Texas, at Austin, Texas, and pending appeal before final judgment in the case the Texas Legislature abolished the Temporary Court by Statute without a savings clause to save pending judgments and cases not final; thereafter the Court of Criminal Appeals of Texas affirmed the judgment of the Trial Court and Petitioner was arrested and placed in jail by the Sheriff of Dallas County, Texas, by virtue of the said judgment.

Thereafter Petitioner applied to the Judge of the newly created Criminal District Court No. 3 of Dallas County, Texas, for a Writ of Habeas Corpus alleging that she was illegally confined by virtue of a void or unenforceable judgment in violation of the Fourteenth Amendment of the Federal Constitution; said application was denied and Petitioner then filed in the Court of Criminal Appeals at Austin, Texas, on December 29th, 1955, an Original Application for Writ of Habeas Corpus alleging the same reasons for granting the writ. After oral argument judgment was entered denying Petitioner's Original Application and Petitioner now prays that this Honorable Court grant the Writ of Certiorari directed to the Court of Criminal Appeals of the State of Texas to review the judgment and sentence in the Original Writ of Habeas Corpus case.

Petitioner has timely filed this Petition and has in all things complied with the provisions of the law.

REASONS FOR GRANTING THE WRIT

I.

Petitioner is illegally confined in violation of the Fourteenth Amendment because the Trial Court wherein Petitioner was convicted was a Temporary Court which was abolished while Petitioner's original case was on appeal. The new Act of the Legislature contained no provision for saving the pending judgments of the defunct court, therefore, Petitioner is illegally confined by virtue of a void or unenforceable judgment directed to a non-existent court.

In the absence of a saving clause providing for the disposition of pending cases in the Special Criminal District Court (Temporary Court created September 1, 1954, abolished September 1, 1955) the judgment rendered against Petitioner is unenforceable and Petitioner's confinement is illegal.

Sec. 172, 14th American Jurisprudence, provides:

> "Effect of Invalid or Repealed Statutes Conferring Jurisdiction.—Whenever a statute from which a court derives its jurisdiction in particular cases is repealed, the court cannot proceed under the repealed statute, even in suits pending at the time of the repeal, unless they are saved by a clause in the repealing statute. This rule holds true until the proceedings have reached a final judgment in the court of last resort, for this court, when it comes to pronounce its decision, conforms it to the law then existing and may, therefore, reverse a judgment which was correct when pronounced in the subordinate tribunal whence the ap-

peal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal.

"If the only law purporting to confer jurisdiction on the court to try the case is void, then all the acts of the court are without authority and also void. In such a case, no intendment of law or presumption of fact can be made in favor of its jurisdiction.

Bowser v. Williams, 25 S. W. 453, 6 Tex. Civ. App. 197.

Emery v. State, 123 S. W. 133—jurisdiction is power to hear and determine cases.

Texas Farm Bureau Association v. Lennox, 296 S. W. 325, the following:

"It is well settled that all pending appeals must fall with the law unless there is reservation of continuing jurisdiction as to them. The repeal of a law giving jurisdiction by a statute containing no saving clause takes away the right to proceed in pending cases undetermined at the time when the law becomes effective. Ex Parte McCardle, 7 Wall. (74 U. S.) 506, 19 L. Ed. 264; Railway Co. v. Grant, 98 U. S. 398, 25 L. Ed. 231; Dennison v. Alexander, 103 U. S. 522, 26 L. Ed. 313; Stewart v. Lattner, 53 Tex. Civ. App. 330, 116 S. W. 860; 25 R. C. L. p. 936; 1 Lewis' Sutherland, Stat. Con. (2d Ed.) p. 557. In the present act there is no saving clause as to jurisdiction to hear appeals pending. And the Act does not provide that 'hereafter' it shall 'read as follows,' so as to fairly indicate an intention not to cut off pending appeals being entertained by this court. Keller v. Ashford, 133 U. S. 610, 10 S. Ct. 494, 33 L. Ed. 667."

It is apparent that Petitioner's case falls squarely within the rule stated in all of the above authorities.

The law as applied in criminal cases in the State of Texas is that after an appeal has been duly and legally noted the Trial Court is powerless to enter any order in any case save and except as provided in the Statute for the substitution of lost and mutilated records. *Walker v. State, 214 S. W. 331; 85 T. C. R. 482.* See also the following authorities:

Wall v. State, 18 Tex. 682, 70 Am. Dec. 302;

Wyatt v. State, 238 S. W. 917; 91 T. C. R. 348;

50 American Jurisprudence, Sec. 570-573, Sec. 569-576.

It has always been the law that when the Trial Court wherein a conviction has occurred is abolished before the conviction has become final on appeal the judgment is not saved absent a savings clause in the repeal statute. This question is of utmost importance to the several states for the reason that no person should be deprived of his liberty by virtue of a void, unenforceable judgment such as the judgment rendered here against Petitioner. It is not open to question that the Legislature in creating a new and different court did not merely continue the Temporary Court on a permanent basis. This contention is supported by the fact that the Terms of the two courts are different, the names are different, the seal of the courts is different. The Opinion of the State Court merely justifies the denial of the Writ of Habeas Corpus by calling the two courts the same.

II.

This Honorable Court has never permitted in civil or criminal cases, the enforcement of a void or unenforceable judgment in violation of the Fourteenth Amendment of the United States Constitution. Attesting authorities are the following:

Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897;

National Exchange Bank of Tiffon v. Wiley, 195 U. S. 257, 25 S. Ct. 70; 49 L. Ed. 184;

Marin v. Augadahl, 247 U. S. 142; 38 S. Ct., 452; 62 L. Ed. 1038-1043;

McDonald v. Mabee, 243 U. S. 90; 37 S. Ct. 343; 61 L. Ed. 608;

Commander v. Bryan (Civil Appeals), 123 S. W. 2d 1008;

Ex Parte Grimes, 81 Tex. Cr. R., 405; 195 S. W. 858;

Ex Parte Quintanilla, 207 S. W. 2d 377.

This Petitioner is now incarcerated by virtue of an unenforceable judgment, entered by a defunct, non-existing court and now being executed by a newly created court that never had jurisdiction of the case, nor the person.

Petitioner very respectfully contends that in keeping with the guarantee of due process of law by both the Federal and State Constitutions, particularly the Fourteenth Amendment of the United States Constitution, a void judgment is incapable of conferring any rights upon any court at any time.

In *Thompson v. Whitman*, supra, this Honorable Court, in citing the case of *Elliott v. Peirsol, 1 Pet. 328-340*, said:

> "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. *But if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.*" (Emphasis ours.)

Again in this same case this Honorable court said:

> "Thus a judgment by the court of a state against a citizen of such state, in its absence and without any notice, expressed or implied, would, it is presumed, be regarded in every external jurisdiction as absolutely void and unenforceable."

In the case of *National Exchange Bank v. Wiley*, supra, this Honorable Court said:

> "The general jurisdiction of the Ohio court undoubtedly embraced such a cause of action as was set forth in the suit on the note. But we are of the opinion that that court had no authority or jurisdiction to render judgment against the obligors if the National Exchange Bank had in fact, sold the note, and ceased before the commencement of that suit, to own it or be entitled to receive the proceeds to its own use. It was, in such case, in legal effect a personal judgment without service or process upon the defendants, and without their appearance in person or by an authorized attorney. The proceedings were wanting in due process of law."

In the instant case your Petitioner has been, and is now being deprived of her liberty by virtue of a mandate issued

by the Court of Criminal Appeals of Texas directing a defunct and non-existing court to enforce its judgment. The judgment of the aforementioned defunct court was seized by a newly created court and executed upon Petitioner when said court had no legal jurisdiction over said judgment or the person of Petitioner. As the result of such illegal action Petitioner is now incarcerated and deprived of her liberty for a period of two years, contrary to due process of law and in violation of the provisions of the Fourteenth Amendment of the United States Constitution.

In the case of *Commander v. Bryan*, supra, the Ft. Worth Court of Civil Appeals said:

> "It is an elementary doctrine that in order for a court to render valid personal judgment, it must be vested by law with jurisdiction of the subject matter in controversy and of the person of the defendant * * * which is in keeping with the guarantee of due process of law by both the Federal and State Constitutions. * * * and also in accord with the general rule that a void judgment is incapable of conferring any rights at any time."

To the same effect is the doctrine laid down by the Court of Criminal Appeals in the case of *Ex Parte Grimes*, supra, and *Ex Parte Quintanilla*, supra, where the Court of Criminal Appeals of Texas sustained collateral attacks upon void judgments and ordered the cases dismissed.

IMPORTANCE

The questions presented here are important to the several state. The Opinion of the State Court is a departure

from established legal principles heretofore decided by this Court and is in violation of the Fourteenth Amendment Federal Constitution.

CONCLUSION

Petitioner respectfully prays that the Honorable Court grant this Petition for Certiorari and that the writ issue to the Court of Court of Criminal Appeals of Texas.

The petition should be granted.

CHARLES W. TESSMER,
202 Fidelity Building,
Dallas, Texas,
Counsel for Petitioner.

Of Counsel:
ROBERT C. BENAVIDES,
Dallas, Texas.

I hereby certify that 3 copies of this petition have been served on the Attorney General of the State of Texas, by mailing, postage prepaid, to his office at Austin, Texas, this.....day of....., 1956.

.....
CHARLES W. TESSMER

APPENDIX

No. 28,088

MARGARET PRIEST,

Appellant,

v.

STATE OF TEXAS,

Appellee.

APPEAL FROM DALLAS COUNTY

OPINION

Relator seeks her release by writ of habeas corpus. Her conviction was by this Court affirmed and mandate issued. Priest v. State, No. 37,676 (not yet reported). She now contends that her confinement by virtue of such mandate is unlawful, and, in order to understand such contention, it is necessary to set forth the legislative history of the creation of the court in which her conviction was had. Article I of Senate Bill 21 of the Acts of the 53rd Legislature, 1st Called Session 1954, Chapter 51, page 105, created the "Special Criminal District Court of Dallas County." Article III of said Act provided that such court should come into existence on September 1, 1954, and cease to exist on August 31, 1956. The above Act shall be hereinafter referred to as the Special Act.

On February 7, 1955, in said court, the relator was convicted and gave notice of appeal to this Court.

Senate Bill 127 of the Acts of the 54th Legislature, regular session 1955, Chapter 256, page 711, made this court permanent and changed its designation so that it would be thereafter known as "Criminal District Court No. 3 of Dallas County." The effective date of this Act, which shall be hereinafter referred to as the Permanent Act, was September 1, 1955.

This Court affirmed relator's appeal, and mandate was issued on December 2, 1955. Such mandate was directed to "Special Criminal District Court of Dallas County. Pursuant to such mandate, the relator was taken into custody and now seeks release by this action. We shall discuss her contentions.

1. That the Permanent Act created a new court and contained no provision for the transfer of pending cases from the Special to the Permanent Court and that therefore the Permanent Court is without authority to issue any capias for the relator's arrest in this case. We think the answer to this contention is to be found in Sections 1 and 8 of the Permanent Act. They read as follows:

> "Section 1. The Special Criminal District Court of Dallas County, heretofore established as a temporary District Court under the terms and provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, is hereby established as a permanent Criminal District Court, the limits of which district shall be co-extensive with the limits of Dallas County, Texas, and shall be known as the Criminal District Court No. 3 of Dallas County.

> "Section 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only; as to all other laws or parts of laws, this Act shall be cumulative, it being the purpose of this Act to make permanent the Special Criminal District Court of Dallas County, heretofore created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105."

From this, we conclude that no provision for transfer of cases and no order of transfer were necessary. This was one and the same court, and the only effect of the Permanent Act was to make it a permanent court and change its designation.

2. That the Permanent Court is without authority to enforce the mandate of this Court because it is directed to a court which is no longer in existence. Our holding that the Special Criminal Court and Criminal District Court No. 3 are one and the same answers this contention.

3. That she is illegally confined because the District Clerk of Dallas County has not issued a capias in compliance with the mandatory provisions of Article 819, V. A. C. C. P.

Article 775, V. A. C. C. P. authorizes the issuance of a commitment upon which a defendant whose conviction has been affirmed on appeal may be admitted to the penitentiary. Either such a commitent or the capias provided for in Article 819, V. A. C. C. P., may be issued by the clerk of the trial court when the mandate affirming the conviction is received, and either is sufficient authority for the arrest

and detention of the defendant whose conviction has become final.

Application for issuance of the writ is denied.

Morrison, Presiding Judge

(Delivered January 18, 1966)

Opinion approved by the Court.

A TRUE COPY.

Attest:

GLENN HAYNES
Glenn Haynes, Clerk

Court of Criminal Appeals of Texas

(Seal)

MINUTES OF COURT OF CRIMINAL APPEALS
Austin, Texas

No. 28,088

MARGARET PRIEST,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM CRIMINAL DISTRICT COURT NO. 3,
OF DALLAS COUNTY, TEXAS

AFFIRMED
OPINION BY JUDGE MORRISON
JANUARY 18th, 1956

The foregoing clause came on to be heard on the original application for a Writ of Habeas Corpus and the same being considered by the Court, it is ordered, adjudged and decreed by the Court that said application be and the same is in all things denied, and that this decision be certified below for observance.

A TRUE COPY

Attest:

GLENN HAYNES
Glenn Haynes, Clerk

Court of Criminal Appeals of Texas

(Seal)

DARK PAGE BLEEDTHRU

CERTIFICATE OF FINAL JUDGMENT

CLERK'S OFFICE, COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

I, Glenn Haynes, Clerk of the Court of Criminal Appeals of Texas, at Austin, do hereby certify that Cause No. 28,088, styled

EX PARTE MARGARET PRIEST

Original Application for Writ of Habeas Corpus was denied by this Court on January 18, 1956.

THEREFORE, this case was disposed of by this Court with the denial of Relator's Application for Issuance of Writ of Habeas Corpus.

With the denying of Relator's Application for Writ of Habeas Corpus relator has exhausted all remedy in this Court, and said judgment has become final on the docket of this Court.

WITNESS my hand and seal of said Court, at office in Austin, Texas, this 2nd day of February, A. D. 1956.

GLENN HAYNES,
Clerk, Court of Criminal Appeals

SPECIAL DISTRICT COURTS—DALLAS AND BEXAR COUNTIES

CHAPTER 51

S. B. NO. 21

An Act creating three temporary Special District Courts as follows: (1) the Special Criminal District Court of Dallas County; (2) the Special 37th District Court for Bexar County; and (3) the Special Criminal District Court of Bexar County; prescribing the jurisdiction, terms, and duration of such courts and adjusting the jurisdiction, terms and business of other District Courts in the counties in which the new courts are to function; providing for the appointment and compensation of the judges and for the appointment, designation, and compensation of other officers of the courts; providing methods for the selection of juries; making other provisions relative to the business and functioning of the District Courts in the counties affected by this Act; making an appropriation for payment of salaries and expenses of the judges of the new courts; providing for severability; repealing conflicting laws; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

ARTICLE I

Section 1.[65] There is hereby created and established at the City of Dallas a Special Criminal District Court to be known as the "Special Criminal District Court of Dallas County," which court shall have and exercise concurrent

[65] Vernon's Ann. C. C. P. art. 52-24b.

jurisdiction with the Criminal District Court of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, as is now given and exercised by the said Criminal District Court of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, under the Constitution and laws of the State of Texas.

Sec. 2.[66] Article 52 of the Code of Criminal Procedure of the State of Texas, 1925, as amended, as the same relates to and provides for the Criminal District Court of Dallas County and the Criminal District Court No. 2 of Dallas County, and Article 199 of the Revised Civil Statutes of the State of Texas, 1925, as amended, as the same relates to and provides for the 14th, 44th, 68th, 95th, 101st, 116th, and 134th District Courts of Dallas County, Texas, are hereby amended so as to hereafter read as follows:

"14th, 44th, 68th, 95th, 101st, 116th, 134th, Criminal District Court of Dallas County, Texas, Criminal District Court No. 2 of Dallas County, Texas and Special Criminal District Court of Dallas County, Texas.[67]

"There is hereby created and established the Criminal Judicial District of Dallas County, Texas, the Criminal Judicial District No. 2 of Dallas County, Texas, and the Special Criminal Judicial District of Dallas County, Texas, each to be composed of Dallas County, Texas, alone and the Criminal District Court of Dallas County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District of Dallas County, Texas, the Criminal District

[66] Vernon's Ann. C. C. P. art 52 note.
[67] Vernon's Ann. Civ. St. art. 199, dist. 14.

Court No. 2 of Dallas County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 2 of Dallas County, Texas, and the Special Criminal District Court of Dallas County, Texas shall have and exercise jurisdiction of the Special Criminal Judicial District of Dallas County, Texas, as is now conferred and to be conferred by law on said Criminal District Courts.

"Dallas County shall constitute the 14th, 44th, 68th, 95th, 101st, 116th, 134th Judicial Districts, the Criminal Judicial District of Dallas County, Texas, the Criminal Judicial District No. 2 of Dallas County, Texas, and the Special Criminal Judicial District of Dallas County, Texas. Each of said ten (10) District Courts shall have and exercise civil and criminal jurisdiction in Dallas County. The said District Courts of the 14th, 44th, 68th, 95th, 101st, 116th, 134th Judicial Districts and the Criminal District Court of Dallas County, Texas, of the Criminal Judicial District of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, of the Criminal Judicial District No. 2 of Dallas County, Texas and the Special Criminal District Court of Dallas County, Texas of the Special Criminal Judicial District of Dallas County, Texas, shall have and exercise, in addition to the jurisdiction now conferred by law on said courts, concurrent jurisdiction coextensive with the limit[1] of Dallas County in all actions, proceedings, matters and causes both civil and criminal of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

[1]So in enrolled bill. Probably should be "limits."

K PAGE BLEEDTHRU

"The present judges of said courts named herein shall continue as judges of said courts as constituted and defined by this Act, and the tenure of office of said judges shall remain the same as is now provided by law.

"The terms of the said courts named herein shall continue and remain the same as now provided by law. The practice and procedure in said courts shall be the same as now provided by law, and, in civil actions, as also provided by the Texas Rules of Civil Procedure applicable to District Courts having successive terms.

"The letters A, B, C, D, E, F, G, H, I and J shall be placed on the dockets and court papers of the respective District Courts of Dallas County to distinguish them: 'A' being used in connection with the 14th District Court, 'B' being used in connection with the 44th District Court, 'C' being used in connection with the 68th District Court, 'D' being used in connection with the 95th District Court, 'E' being used in connection with the 101st District Court, 'F' being used in connection with the 116th District Court, 'G' being used in connection with the 134th District Court, 'H' being used in connection with the said Criminal District Court, 'I' being used in connection with the said Criminal District Court No. 2, and 'J' being used in connection with the said Special Criminal District Court. All cases in said Criminal District Courts prior to the passage of this Act shall retain the same numbers and letter designations heretofore assigned to said cases.

"All indictments shall be returned to the Criminal District Court of Dallas County, Texas, the Criminal District Court No. 2 of Dallas County, Texas, and the Special Criminal District Court of Dallas County, Texas. The District Clerk of Dallas County shall docket successively on the dockets of the District Courts of the 14th, 44th, 68th, 95th, 101st, 116th, and 134th Judicial District Courts in Dallas County so that the first case or proceeding filed after the effective date of this Act and every seventh case or proceedings thereafter filed shall be docketed in the 14th District Court, the second case or proceeding filed and every seventh case or proceeding thereafter shall be docketed in the 44th District Court; the third case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 68th District Court; the fourth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 95th District Court; the fifth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 101st District Court; the sixth case or proceeding filed and every seventh case or proceeding thereafter shall be docketed in the 116th District Court; the seventh case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 134th District Court, and so on in rotation, and in this manner all cases or proceedings filed shall be docketed in and divided equally among the 14th, 44th, 68th, 95th, 101st, 116th, and the 134th Judicial District Courts, one-seventh (1/7) in each court.

"The District Judges of Dallas County, Texas, shall on or before the first day of January and the first day of July of each year elect one of said District Judges as Presiding Judge of the Dallas County District Judges. The Presiding Judge of Dallas County District Judges shall, when this Act becomes effective, and from time to time as occasion may require in order to adjust the business and dockets of said court, transfer, or cause to be transferred, upon the approval of the Judges of said courts, causes from any one of said courts to any other of said courts in order that the business of said courts shall be continually equalized and distributed among them to the end that each judge shall be at all times provided with cases or proceedings to try or otherwise consider and that the trial of no cause shall be delayed because of the disqualification of the judge in whose court it is pending. When a case is transferred, proper order shall be entered on the minutes of the court as evidence thereof. The clerk shall properly docket all cases transferred.

"In case of a disqualification of the judge of any one of the said several courts in any case or proceeding, such case or proceeding may be transferred to any other of said courts with the consent of the judge thereof, or the judge of any other of said courts may sit in the court in which the case or proceeding is then pending and try or otherwise dispose of the same. All cases or proceedings transferred shall be properly docketed by the clerk of the court to which transferred.

"All bail bonds, recognizances, or other obligations taken for the appearance of defendants, parties and witnesses in any of the said District Courts or Criminal District Courts of Dallas County, Texas, or any inferior court of Dallas County, Texas, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in any of said courts in which said cause may be pending or to which same may be transferred. In all cases transferred from one of said courts to another all process, bonds, recognizances, and obligations extant at time of such transfer shall be returned to and filed in the court to which the cause is transferred and shall be valid and binding as though originally issued out of the court to which it transferred.

"The judges of said District Courts and Criminal District Courts of Dallas County, Texas, shall, by agreement among themselves, take vacations so that there shall at all times be at least three (3) judges of the said courts in the county during such vacation period.

"During the absence of any of the judges of the District and Criminal District Courts of Dallas County, Texas, for sickness or for any other reason except disqualification, the practicing lawyers of the said courts shall not elect a Special Judge for any of said courts as now provided by law, until said lawyers have first requested the Presiding Judge of the First Administrative Judicial District of Texas to assign a judge to preside over the court during such absence and if said Presiding Judge has not made an assignment within a period of four (4) days from such request then said practicing lawyers may elect a Special Judge to

preside over such court, as now provided in Title 40, Chapter 1, of the Revised Civil Statutes of the State of Texas, 1925.

"The judges of the said District Courts and Criminal District Courts shall continue to serve for the terms elected or appointed as provided by the Constitution and laws of the State of Texas.

"The District Clerk for said courts shall be elected as provided by the Constitution and laws of the State of Texas and any vacancies in the office of said clerk shall be filled by appointments of the judges of the several District Courts and Criminal District Courts.

"The judge of each of the several District Courts and the Criminal District Courts shall appoint an official court reporter for his court as provided by General Law to be compensated as provided by law.

"The sheriff of Dallas County, either in person or by deputy, shall attend the several courts as required by law or when required by the judges thereof, and the sheriff and constables of the several counties of this State, when executing process out of said courts, shall receive fees as provided by General Law for executing process issued out of District Courts.

"The clerk of the District Courts of Dallas County, shall be clerk of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

"The Criminal District Attorney of Dallas County shall be District Attorney of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

"Each of the said District Courts shall have an official seal as provided by law for District Courts and Criminal District Courts.

"The grand jury shall be empaneled by the judges of the Criminal District Courts of Dallas County, Texas, as is now provided by law.

"The procedure for drawing jurors for said courts shall be the same as is now or may hereafter be provided by law.

"From and after the time this law shall take effect the District Courts and the Criminal District Courts of Dallas County, Texas, shall have and exercise concurrent jurisdiction with each other in all cases, criminal and civil, and in all matters and proceedings of which jurisdiction is vested in District Courts by the Constitution and laws of the State of Texas. The judge of any of the said District Courts and the Criminal District Courts may in his discretion try and dispose of any causes, matters and proceedings for any other judge of said courts.

"It is the purpose of this Act to constitute the District Courts and the Criminal District Courts of Dallas County, Texas as constitutional District Courts of general jurisdiction, as provided by the Constitution and laws of the State of Texas."

Sec. 3.[68] Nothing in this Act is intended to repeal or amend Article 52-9 of the Code of Criminal Procedure of 1925, or the provisions of House Bill No. 93, Chapter 368, Acts of the 51st Legislature, amending Section 4, Chapter 204, Acts of the 48th Legislature, or any existing law relating to juveniles in Dallas County, the Juvenile Court of Dallas County or the judges thereof, and in the case of any conflict with said Act the provisions of House Bill No. 93, Acts of the 51st Legislature will control.

ARTICLE III[71]

Section 1. Each special court created by this Act shall come into existence on *September 1, 1954*, and shall cease to exist on *August 31, 1956*, at which time the term of office of the judge thereof shall expire by limitation of law. Necessary preparations for the creation and functioning of the courts may be made before September 1, 1954, but the judges shall not take office until that date.

Sec. 2. The Governor shall appoint, with the advice and consent of the Senate, a judge of each of the courts created by this Act. The persons so appointed shall possess the same qualifications provided by law for District Judges. The compensation of each judge shall be the same as the compensation paid to the judges of other District Courts, including the expenses as provided by the laws of Texas; and the compensation herein provided for shall be paid in the manner in which other District Judges of the State are paid.

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[68] Vernon's Ann. Civ. St. art. 199, dist. 14 note.
[71] Vernon's Ann. Civ. St. art. 199, dist. 14 note.

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Sec. 3. At the expiration of the term for which these special courts are created, each judge shall deliver all the dockets and records of his court in each county to the district clerk of the county, and any case pending on the dockets of the court shall be transferred by the district clerk to another District Court in the county in which the case is pending.

Sec. 4. If any provision or section of this Act is held unconstitutional or invalid, such invalidity shall not affect the remaining provisions hereof, but all other parts shall remain in full force and effect.

Sec. 5. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only; as to all other laws and parts of laws, this Act shall be cumulative.

Sec. 6. There is hereby appropriated out of the General Revenue Fund, supplementing the appropriation made to the Judiciary Section of the Comptroller's Department in Chapter 81, Acts of the Regular Session of the 53rd Legislature, the sum of $27,000.00 for payment of the salaries of the judges of the special courts created by this Act for the fiscal year ending August 31, 1955.

ARTICLE IV

The crowded condition of the calendar in each House, and the near approach of the end of the session, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be, and the same is hereby suspended.

K PAGE BLEEDTHRU

Passed the Senate, April 9, 1954, by a viva voce vote; subject to the provisionsof Section 49a, Article III, of the Constitution of Texas; passed the House, April 9, 1954, by a viva voce vote; subject to the provisions of Section 49a, Article III, of the Constiution of Texas.

Approved May 1, 1954.

Effective 90 days after April 13, 1954, date of adjournment.

DALLAS COUNTY—SPECIAL CRIMINAL DISTRICT COURT—PERMANENT

CHAPTER 256[51]

S.B. No. 127

An Act establishing a permanent District Court the Special Criminal District Court of Dallas County, heretofore established as a temporary District Court under the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, to be known as the Criminal District Court No. 3 of Dallas County; describing the terms and jurisdiction of the Criminal District Court No. 3 of Dallas County; adjusting the terms, jurisdiction and business of the District Courts of Dallas County; providing that the present Judge of the Special Criminal District Court of Dallas County shall be the District Judge of the Criminal District Court No. 3 of Dallas County until the term for which he is elected expires and until his successor qualifies; providing for the appoint-

[51]Vernon's Ann. C. C. art 5—24c.

ment, designation and compensation of other officers of the District Courts of Dallas County; providing methods for selection of juries; making other provisions relative to the business and functioning of the District Courts of Dallas County; amending Article 52 of the Code of Criminal Procedure of Texas, 1925, as amended, as the same relates to and provides for the Criminal District Courts of Dallas County; amending Article 199 of the Revised Civil Statutes of Texas, 1925, as amended, as the same relates to the 14th, 44th, 68th, 95th, 101st, 116th, and 134th District Courts of Dallas County; making necessary appropriations; providing for severability clause; repealing conflicting laws; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. The Special Criminal District Court of Dallas County, heretofore established as a temporary District Court under the terms and provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, *is hereby established as a permanent Criminal District Court,* the limits of which district shall be co-extensive with the limits of Dallas County, Texas, and shall be known as the Criminal District Court No. 3 of Dallas County.

Sec. 2. The present District Judge of the Special Criminal District Court of Dallas County, duly elected and acting as such, shall be the District Judge of the Criminal District Court No. 3 of Dallas County until the time for which

he has been elected expires and until his successor is duly elected and qualified.

Sec. 3. Article 52 of the Code of Criminal Procedure of Texas, 1925, as amended, as the same relates to and provides for the Criminal District Court of Dallas County, the Criminal District Court No. 2 of Dallas County, the Special Criminal District Court of Dallas County, and Article 199 of the Revised Civil Statutes of Texas, 1925, as amended, as the same relates to and provides for the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts of Dallas County, *are hereby amended*[52] so as hereafter to read as follows:

"14th, 44th, 68th, 95th, 101st, 116th, 134th, Criminal District Court of Dallas County, Texas, Criminal District Court No. 2 of Dallas County, Texas, and Criminal District No. 3 of Dallas County, Texas.

"There is hereby created and established the Criminal Judicial District of Dallas County, Texas, the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal Judicial District No. 3 of Dallas County, Texas, each to be composed of Dallas County, Texas, alone; and the Criminal District Court of Dallas County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District of Dallas County, Texas, the Criminal District Court No. 2 of Dallas County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal District Court No. 3 of Dallas County, Texas, shall have and exercise jurisdic-

[52]Vernon's Ann. Civ. St. art 199(14).

tion of the Criminal Judicial District No. 3 of Dallas County, Texas, as is now conferred and to be conferred by law on said Criminal District Courts.

"Dallas County shall constitute the 14th, 44th, 68th, 95th, 101st, 116th, 134th Judicial District, the Criminal Judicial District of Dallas County, Texas, the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal Judicial District No. 3 of Dallas County, Texas. Each of said ten (10) District Courts shall have and exercise civil and criminal jurisdiction in Dallas County. The said District Courts of the 14th, 44th, 68th, 95th, 101st, 116th, 134th Judicial Districts and the Criminal District Court of Dallas County, Texas, of the Criminal Judicial District Court of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, of the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal District Court No. 3 of Dallas Couity, Texas, of the Criminal Judicial District No. 3 of Dallas County, Texas, shall have and exercise, in addition to the jurisdiction now conferred by law on said Courts, concurrent jurisdiction co-extensive with the limits of Dallas County in all actions, proceedings, matters and causes both civil and criminal of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

"The present Judges of said Courts named herein shall continue as Judges of said Courts as constituted and defined by this Act, and the tenure of office of said Judges shall remain the same as is now provided by law.

"The terms of the said Courts named herein shall continue and remain the same as now provided by law. The terms of the Criminal District Court No. 3 of Dallas County shall be the same as now provided by law for the Criminal District Court No. 2 of Dallas County. The practice and procedure in said Courts shall be the same as now provided by law, and, in civil actions, as also provided by the Texas Rules of Civil Procedure applicable to District Courts having successive terms.

"The letters A, B, C, D, E, F, G, H, I, and J shall be placed on the dockets and Court papers of the respective District Courts of Dallas County to distinguish them: 'A' being used in connection with the 14th District Court; 'B' being used in connection with the 44th District Court; 'C' being used in connection with the 68th District Court; 'D' being used in connection with the 95th District Court; 'E' being used in connection with the 101st District Court; 'F' being used in connection with the 116th District Court; 'G' being used in connection with the 134th District Court; 'H' being used in connection with the said Criminal District Court; 'I' being used in connection with the said Criminal District Court No. 2; and 'J' being used in connection with the said Criminal District Court No. 3. All cases in said Criminal District Courts prior to the passage of this Act shall retain the same numbers and letter designations heretofore assigned to said cases.

"All indictments shall be returned to the Criminal District Court of Dallas County, Texas, the Criminal District Court No. 2 of Dallas County, Texas, and the Criminal Dis-

trict Court No. 3 of Dallas County, Texas. The District Clerk of Dallas County shall docket successively on the dockets of the District Courts of the 14th, 44th, 68th, 95th, 101st, 116th, and 134th Judicial District Courts in Dallas County so that the first case or proceeding filed after the effective date of this Act and every seventh case or proceeding thereafter filed shall be docketed in the 14th District Court; the second case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 44th District Court; the third case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 68th District Court; the fourth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 95th District Court; the fifth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 101st District Court; the sixth case or proceeding filed and every seventh case or proceeding thereafter shall be docketed in the 116th District Court; the seventh case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 134th District Court; and so on in rotation, and in this manner all cases or proceedings filed shall be docketed in and divided equally among the 14th, 44th, 68th, 95th, 101st, 116th, and the 134th Judicial District Courts, one-seventh (1/7) in each court.

"The District Judges of Dallas County, Texas, shall on or before the first day of January and the first day of July of each year elect one of said District Judges as Presiding

Judge of the Dallas County District Judges. The Presiding Judge of Dallas County District Judges shall, when this Act becomes effective, and from time to time as occasion may require in order to adjust the business and dockets of said court, transfer, or cause to be transferred, upon the approval of the Judges of said courts, causes from any one of said courts to any other of said courts in order that the business of said courts shall be continually equalized and distributed among them to the end that each judge shall be at all times provided with cases or proceedings to try or otherwise consider and that the trial of no cause shall be delayed because of the disqualification of the judge in whose court it is pending. When a case is transferred, proper order shall be entered on the minutes of the court as evidence thereof. The clerk shall properly docket all cases transferred.

"In case of a disqualification of the judge of any one of the said several courts in any case or proceeding, such case or proceeding may be transferred to any other of said courts with the consent of the judge thereof, or the judge of any other of said courts may sit in the court in which the case or proceeding is then pending and try or otherwise dispose of the same. All cases or proceedings transferred shall be properly docketed by the clerk of the court to which transferred.

"All bail bonds, recognizances, or other obligations taken for the appearance of defendants, parties and witnesses in any of the said District Courts or Criminal District Courts of Dallas County, Texas, or any inferior court of Dallas

County, Texas, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in any of said courts in which said cause may be pending or to which same may be transferred. In all cases transferred from one of said courts to another all process, bonds, recognizances, and obligations extant at time of such transfer shall be returned to and filed in the court to which the cause is transferred and shall be valid and binding as though originally issued out of the court to which it is transferred.

"The judges of said District Courts and Criminal District Courts of Dallas County, Texas, shall, by agreement among themselves, take vacations so that there shall at all times be at least three (3) judges of the said courts in the county during such vacation period.

"During the absence of any of the judges of the District and Criminal District Courts of Dallas County, Texas, for sickness or for any other reason except disqualification, the practicing lawyers of the said courts shall not elect a Special Judge for any of said courts as now provided by law, until said lawyers have first requested the Presiding Judge of the First Administrative Judicial District of Texas to assign a judge to preside over the court during such absence; and if said Presiding Judge has not made an assignment within a period of four (4) days from such request then said practicing lawyers may elect a Special Judge to preside over such court, as now provided in Title 40, Chapter 1, of the Revised Civil Statutes of the State of Texas, 1925.

"The judges of the said District Courts and Criminal District Courts shall continue to serve for the terms elected or appointed as provided by the Constitution and laws of the State of Texas.

"The District Clerk for said courts shall be elected as provided by the Constitution and laws of the State of Texas and any vacancies in the office of said clerk shall be filled by appointments of the judges of the several District Courts and Criminal District Courts.

"The judge of each of the several District Courts and the Criminal District Courts shall appoint an official court reporter for his court as provided by General Law to be compensated as provided by law.

"The sheriff of Dallas County, either in person or by deputy, shall attend the several courts as required by law or when required by the judges thereof, and the sheriff and constables of the several counties of this State, when executing process out of said courts, shall receive fees as provided by General Law for executing process issued out of District Courts.

"The clerk of the District Courts of Dallas County, shall be clerk of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

"The Criminal District Attorney of Dallas County shall be District Attorney of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

"Each of the said District Courts shall have an official seal as provided by law for District Courts and Criminal District Courts.

"The grand jury shall be empaneled by the judges of the Criminal District Courts of Dallas County, Texas, as is now provided by law.

"The procedure for drawing jurors for said courts shall be the same as is now or may hereafter be provided by law.

"From and after the time this law shall take effect, the District Courts and the Criminal District Courts of Dallas County, Texas, shall have and exercise concurrent jurisdiction with each other in all cases, criminal and civil, and in all matters and proceedings of which jurisdiction is vested in District Courts by the Constitution and laws of the State of Texas. The judge of any of the said District Courts and the Criminal District Courts may in his discretion try and dispose of any causes, matters and proceedings for any other judge of said courts.

Sec. 4. Nothing in this Act is intended to repeal or amend Article 52—9 of the Code of Criminal Procedure of 1925, or the provisions of House Bill No. 93. Chapter 368, Acts of the 51st Legislature, amending Section 4, Chapter 204, Acts of the 48th Legislature, or any existing law relating to juveniles in Dallas County, the Juvenile Court of Dallas County or the Judges thereof, and in the case of any conflict with said Act the provisions of House Bill No. 93, Acts of the 51st Legislature, will control.

Sec. 5. The compensation of each Judge shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided by the laws of Texas, and the compensation shall be paid in the manner in which other District Judges of the State are paid.

Sec. 6. The unappropriated balances of moneys appropriated by the provisions of Section 6 of Article III of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, is hereby appropriated for the payment of the salaries of the Judge of the Criminal District Court No. 3 of Dallas County for the current fiscal year; and the Judges of the Special District Courts of Bexar County created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105.

Sec. 7. If any provision or section of this Act is held unconstitutional or invalid, such invalidity shall not affect the remaining provisions hereof, but all other parts or provisions shall remain in full force and effect.

Sec. 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only; as to all other laws or parts of laws, this Act shall be cumulative, it being the purpose of this Act to make permanent the Special Criminal District Court of Dallas County, heretofore created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105.

Sec. 9. This Act shall take effect on September 1, 1955.

Sec. 10. The crowded condition of the dockets of the District Courts in Dallas County, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended; and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted. (Emphasis in foregoing articles ours.)

Passed the Senate, April 25, 1955, by a viva voce vote; passed the House April 29, 1955: Yeas 137, Nays 1.

Approved May 18, 1955.

Effective 90 days after the date of adjournment.

AMENDMENT XIV. Section 1 UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."